



**Asia-Pacific
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Agenda Item: 7(3)

Procedural Fairness in the Deliberations and Determination Phase

Purpose: Information
Submitted by: Indonesia



**Competition Policy and Law Group Meeting
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Procedural Fairness in the Deliberations and Determination Phase

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Legal Basis

- Law Number 5 Year 1999 Concerning Prohibition of Monopolistic Practices and Unfair Business Competition
- Regulation of Commission for The Supervision of Business Competition Number 1 Year 2010 Concerning Case Handling Procedure
- Regulation of the Supreme Court Republic of Indonesia Number 3 Year 2005 concerning The Procedures for Filing Objections Against The Decision of KPPU

Case Handling Procedure

- Complaint (and/or Monitoring) Handling
- Investigations Stage
- Prosecution Stage
- Commission Council Hearing Process
- Commission Council Deliberation and Decision Process

Steps in the Hearing of the Commission Council

- Preliminary Hearing (Max 30 days): before the CC the Investigators present their Report, and the Reported parties present their response. For the follow-up (next) hearing, the reported parties may propose the name of experts and witnesses, and other related documents;
- The report of the hearing is presented by the CC in the plenary session of the Commission to determine whether the case is continued (50% + 1);
- Follow-up Hearing (60 days extendable for 30 days): the CC examine evidences provided by investigator and reported parties, and related experts and witnesses. Before this step is ended, both parties submitted their final conclusion to the CC;

Deliberation and Decision

- Deliberation for decision is undertaken by the CC in max 7 days after the Follow up hearing is ended;
- The CC deliberation is undertaken in a strictly confidential meeting;
- The CC has to determine and decide whether the evidences are reliable (the rule is under other specific regulation of the Commission);
- The decision has to be formulated within 15 days after the follow-up hearing is ended;
- Member of the CC may provide (written) dissenting opinion to be included in the decision in case of disagreed to the conclusion;

Hearing and Deliberation Principles

- Inquisitorial System:
the Commission Council is active in determining facts of the case
- Due Process of Law
 - Separation of Function
 - *Audi et alteram partem*
 - Transparency
 - Legal Certainty

Separation of Function

Investigation/ Inquiry Function

- Conducted by Investigator of the KPPU
- Complaint with damage is prepared solely by complainant
- An investigation carried out to obtain sufficient evidence, clarity, and completeness of the alleged violation
- Investigator has the right to summon and ask information from The Reporting Party, Business actors, witnesses, experts, and other related parties, and obtain letters and/or documents, on the spot investigations, and analyze of information, mail, and/or documents and the results of on-the-spot-investigations;

Separation of Function

Commission Council Hearing Process

- Commission Council shall consist of at least 3 (three) Commissioners, that one of them became the Chairperson of the Commission Council:
- The Commission Council is assisted by the Registrar;

Audi et Alteram Partem

- The Reported Party and Investigator are always present in the whole hearing process;
- The Reported Party and Investigator entitle to cross-examine the evidences presented in the hearing process;
- Commission Council only accepts evidence obtained through legal procedure;
- Commission Council determines the admissibility of evidences;

Type of Evidences

- Witness testimonies
- Expert testimonies
- Letters and/or documents
- Circumstantial Evidence
- Statement by Business Actors

Burden of Proof

Standard of Proof:

"semper necessitas probandi incumbit ei qui agit"

(the necessity of proof always lies with the person who lays charges)

Transparency

- The hearing process is open to the public
- Reported or reporting party may request the Chairperson of the Commission Council to declare that Commission Council Hearing closed to the public in terms of Reported or Reporting Party will submit the confidential documents in accordance with applicable regulations
- Decision is read out in an open hearing for public
- Decision can be accessed by the public through KPPU website
- Member of the Commission Council is entitled to present dissenting opinion

Dissenting Opinion

- In case of a Member of the Commission Council have a different opinion of the majority of the Commission Council, the dissenting opinion should be made written and being attached in the Commission Decision
- Dissenting opinion along with the reasons is communicated to other Member of the Commission Council in the Commission Council Deliberation before rendering the Decision
- Dissenting opinion must be submitted in written at least 2 (two) days after the Commission Council did not reach consensus

Legal Certainty

Time Frame by Law

- Time frame of Commission Council hearing process
- Time frame of Commission Council Deliberation
- Time frame of Filing Objection against KPPU Decision to the District Court

Commission Hearing Process

- Preliminary Examination process is no longer than 30 days
- Follow-up Examination process is maximum 60 days and can be extended for maximum 30 days

Commission Council Deliberation

- Commission Council evaluate, analyze, conclude and decide the case based on sufficient evidence;
- The result of Commission Council Meeting set forth in the Decision
- If proven to have the offense, the Commission Council may decide administrative sanctions in accordance with the provisions of the law
- In the decision of the Commission Council, the Commission can provide advice and opinion to the Government relating to the case;
- In making a decision, the Commission Council consider exculpatory and inculpatory evidences, as expressed on the Legal Considerations in the Decision
- Commission Council handle the case independently, there is no interference from other parties, whether from the Commissioners, and/or from the Court

Objection Against KPPU Decision

- Party may file objections against the KPPU Decision within 14 (fourteen) days after the Decision;
- Objection filed in the District Court where the Reported business actors have legal business domicile
- The Decision of Commission is considered to be binding if the business actors do not filed objection to the district court within 14 days after the copy of the decision was received;

Thank You